THE RECORD

OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

VOLUME ELEVEN

1956

THE RECORD of The Association of the Bar is published at 42 West 44th Street, New York, 36. Editorial inquiries should be addressed to the Executive Secretary. Information on exchange arrangements may be secured from the Librarian of the Association.

THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

ALLEN T. KLOTS, *President* | PAUL B. DE WITT, *Executive Secretary* | MANDEVILLE MULLALLY, JR., *Secretary*

THE RECORD is published at the House of the Association, 42 West 44th Street, New York 36.

Volume 11 JANUARY 1956 *Number 1*

Association Activities

THE COMMITTEE on Entertainment, Roger B. Hunting, Chairman, sponsored a successful Twelfth Night Party, presided over by Judge James Garrett Wallace. The party was in honor of Newman Levy. Entertainment was provided by members of the Committee on Entertainment and professional entertainers.

IN COOPERATION with the New York Civil Liberties Union, the Association has published a pamphlet entitled "If You Are Arrested." Copies of the pamphlet have been mailed to the membership. Two days after the announcement of the pamphlet the Union and the Association had distributed 25,000 copies. Over 1,100 letters requesting copies of the pamphlet came to the Association.

THE SECTION on Jurisprudence and Comparative Law, The Honorable Samuel C. Coleman, Chairman, is cooperating with the Parker School of Foreign and Comparative Law of Columbia University, of which Professor Willis L. M. Reese is the Director,

in holding a series of lectures on the lawyer's role in international affairs. The first of the lectures was given by Davidson Sommers, General Counsel of the International Bank for Reconstruction and Development. The second in the series was delivered by George W. Ball, a member of the Bar of Washington, D. C.

AT THE December Stated Meeting the following judges were guests of the Association and spoke briefly on the work of their courts: Aron Steuer, Justice, Supreme Court, First Judicial District and Secretary, Board of Justices; John A. Mullen, Judge, Court of General Sessions; John A. Byrnes, Chief Justice, City Court; Harry P. Eppig, President Justice, Municipal Court; John Warren Hill, Presiding Justice, Domestic Relations Court; and John M. Murtagh, Chief City Magistrate. Presiding Justice David W. Peck was also present and spoke briefly. Interim reports were received from the Committee on Administrative Law, Chester T. Lane, Chairman, and the Special Committee on Improvement of Family Law, Richard H. Wels, Chairman.

BY AUTHORITY of the Executive Committee, the Committee on Professional Ethics, Standard Dunn, Chairman, filed a brief *amicus curiae* in the case of *United States of America* v. *Standard Oil Company (New Jersey) and Esso Export Corporation*. The brief dealt with the application of the canons of ethics to a conflict of interest problem raised in the trial of the case.

AFTER hearing a report on the meeting of the International Maritime Committee at Madrid by the Chairman of the Committee, Willam G. Symmers, the Committee on Admiralty decided to prepare a report on the proposals with respect to limitation of liability which were discussed at Madrid. The Commit-

tee will also consider the Madrid proposals on liability of carriers with respect to stowaways.

AT THE January 17 Stated Meeting, the Special Committee on the Matter of Communist Lawyers, Roy M. D. Richardson, Chairman, will present a report which will be circulated to the membership in advance of the meeting.

THE COMMITTEE on Arbitration, Vincent J. Malone, Chairman, is revising the Committee's arbitration manual. The new manual will include a more detailed discussion of the advantages of arbitration, the conduct of hearings, and the use of Section 301 of the Labor Management Relations Act.

AMONG MATTERS being considered by the Committee on International Law, John V. Duncan, Chairman, are the Niagara Treaty, the General Agreement on Tariffs and Trade (GATT), and the current form of Senator Bricker's proposed amendment.

THE COMMITTEE on Uniform State Laws, William Curtis Pierce, Chairman, has under consideration the proposed Uniform Motor Vehicle Certificate of Title and Anti-Theft Act. The Committee will also consider, when released, the report of the New York State Law Revision Commission on the Uniform Commercial Code.

ARTHUR H. GOLDBERG, Chairman of the Committee on Municipal Affairs, represented the Association at the public hearings of the City Council's Committee on Civil Employees and Veterans, which has under consideration the Barnes-Isaacs Bill (Int. No. 25)

to repeal the Lyons Residence Law. Mr. Goldberg supported the Barnes-Isaacs Bill and submitted the following statement:

"Our committee recommends that the Barnes-Isaacs Bill (Int. No. 25) to repeal the Lyons Residence Law (Administrative Code §40–4.0) be approved.

"The inflexible three-year local residence requirement of the Lyons Law, a depression-bred restriction, has long been under fire. It was sharply criticized by the Gulick Committee as having "outlived its usefulness" (Report of the Mayor's Committee on Management Survey, Volume 1, pp. 3, 29, 76). That committee found that the 'conditions which existed at the time of the enactment of the Lyons Law have been reversed, so that the residence requirement has become more of a hindrance than a benefit for the City and its inhabitants.'

"The soundness of these findings is, in the opinion of our committee, a matter of common knowledge. The City Council has given some confirmation of the need for repeal by several enactments exempting certain positions from the law's requirements. See, e.g., L.L. 1953, No. 189 §2, exempting the city administrator and his deputies; and see subdivisions f and i of the Lyons Law (Adm. Code, §B40–4.0).

"Certain residence requirements for persons 'holding a civil office'—contained in Sections 3 and 30 of the Public Officers Law and applicable to positions in city government—would remain on the statute books if the Lyons Law were repealed by the Barnes-Isaacs Bill. These provisions of the state law require residence in the city at the time of appointment, and during the term of office, but according to an opinion of the Attorney General, they are applicable only to 'public officers' and not to 'employees.'

"Residence requirements for employees, corresponding to those for the incumbents of a 'civil office,' could be imposed, or relaxed, as changing conditions indicated, by the

City Civil Service Commission under its rule-making powers, and by the City Personnel Director, in harmony with the provisions of the State Civil Service Law, §14. See *Marasco* v. *Morse*, 22 N.Y.S. 2d 315, 322 (not officially reported), aff'd 263 App. Div. 1063, aff'd 289 N.Y. 768, holding that the provision of Section 14 that appointments involving local duties shall be made from residents of local areas, was directory rather than mandatory, as was a rule to the same effect, adopted by the State Civil Service Commission.

"Our committee is of the opinion that the City Personnel Department should be given similar discretionary powers by repeal of the Lyons Law."

GUESTS of the Committee on Foreign Law, Willis L. M. Reese, Chairman, at its November meeting were Professor L. R. Sivasubramanian, Dean of the Law School at the University of New Delhi, India, and Dr. Enrique R. Aftalion of Rio de Janeiro, Brazil. The Committee has under consideration the commercial treaties to be concluded by the United States with Haiti and with Iran. Dean Sivasubramanian spoke to the Committee on certain problems of Indian constitutional law.

IN THE column, "Current Comment," of the December 3, 1955, issue of *America*, the National Catholic Weekly Review, the following will be of interest to members of the Association:

SELECTION OF JUDGES

"In his campaign last spring Mayor Richard J. Daley of Chicago insisted that it is more democratic to elect judges than to allow them to be appointed. Allen Klots, president of the Association of the Bar of the City of New York,

emphatically disagrees. This problem currently faces New York's Temporary State Commission of the Courts in its study of proposals to reorganize the courts.

"The simple appointment of judges is, of course, exposed to the evils of political favoritism and bribery. But election of judges is an empty democratic gesture if the list of candidates has been selected by the county chairman of a dominant political party.

"Even if the two parties are evenly matched, candidates are forced into the necessary compromises of politics. Not only do they find themselves obligated to campaign contributors, but while in office and facing another campaign, they are tempted to avoid unpopular interpretations of the law. Moreover, on election day voters often face long lists of judicial candidates completely unknown to them.

"In a democracy, politics cannot be wholly divorced from any branch of government, but some test should be devised for judicial competence. An obvious minimum here is a bipartisan commission to select the names of qualified lawyers. The Governor or Mayor would then make judicial appointments from this list. The people's check on these appointments would be the voters' approval of the administration at the next election."

THE Sixth Annual National Moot Court Competition, sponsored by the Young Lawyers Committee of which Harman Hawkins is Chairman, was won this year by the Georgetown University Law Center, which also won the championship in 1950 and 1952. Mr. Justice John M. Harlan of the United States Supreme Court presided over the final argument, and presented to the Georgetown team the Judge John C. Knox Silver Cup and the Major General William J. Donovan Prize of Five Hundred Dollars for use in Georgetown's Moot Court program. Speaking for the Moot Supreme Court, Mr. Justice Harlan commended both Georgetown

and the runner-up team from the Walter F. George School of Law of Mercer University for their thorough preparation and effective presentation of the case, which arose under the anti-merger provision of the Clayton Anti-Trust Act.

Georgetown's team consisted of Henry St. John FitzGerald, James E. Hogan, and Francis J. Larkin. Hogan was judged to have made the best oral presentation in the final argument. Members of the Mercer team were Stanley R. Segal, Eugene L. Heinrich, and L. Ray Patterson. The Harrison Tweed Bowl, awarded yearly to the team submitting the best brief in the final rounds, was won by the University of Pennsylvania Law School team, whose members were Richard L. Bond, Robert H. Clampitt and Alan M. Ruben. The New York City champion—Brooklyn Law School—was eliminated in the second preliminary round by the University of Chicago Law School, and the defending champion—Columbia University Law School—reached the quarter-finals where it was defeated by Mercer.

Nearly 90 law schools participated in the competition this year. Twenty-one survived November's regional rounds and competed in the final rounds on December 14, 15 and 16. They were Brooklyn Law School; Columbia University School of Law; Cornell Law School; Emory University, Lamar School of Law; Georgetown University Law Center; Loyola University, of the South School of Law; Loyola University School of Law, Los Angeles; Mercer University, Walter F. George School of Law; St. Louis University School of Law; Southern Methodist University School of Law; University of Chicago Law School; University of Colorado School of Law; University of Illinois College of Law; University of Kentucky College of Law; University of Pennsylvania Law School; University of Virginia Department of Law; Villanova University School of Law; Wake Forest College School of Law; Western Reserve University, Franklin T. Backus Law School; Willamette University College of Law, and Yale Law School.

Sitting on the final bench were Mr. Justice Harlan; Stanley H. Fuld, Judge of the New York Court of Appeals; John Biggs, Jr.,

Chief Judge of the United States Court of Appeals, Third Circuit; J. Edward Lumbard, Judge of the United States Court of Appeals, Second Circuit; Simon E. Sobeloff, Solicitor General of the United States; Milton Handler, Professor of Law, Columbia University School of Law, and Allen T. Klots, President of the Association.

Two special prizes, consisting of identical silver bowls, were awarded this year by the American College of Trial Lawyers. Wayne E. Stichter, President of the College, presented one of the bowls to the championship Georgetown team and the other to James E. Hogan of Georgetown, who had made the best oral presentation in the final argument.

The Calendar of the Association for January and February

(As of January 13, 1956)

January 3
Dinner Meeting of Committee on Bill of Rights
Dinner Meeting of Committee on Improvement of Family Law
Dinner Meeting of Committee on Increase of Membership (Division 1) at Harvard Club

January 4
Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates
Dinner Meeting of Committee on Increase of Membership (Division 2) at Harvard Club

January 5
Dinner Meeting of Committee on Increase of Membership (Division 3) at Harvard Club
Meeting of Committee on Domestic Relations Court
Meeting of Section on Jurisprudence and Comparative Law. *"The Lawyer's Role in International Transactions." Speaker—George W. Ball, Esq.*
Dinner Meeting of Committee on Professional Ethics

January 6
Annual Twelfth Night Party. Sponsorship Entertainment Committee

January 9
Dinner Meeting of Committee on Federal Legislation
Meeting of Committee on Criminal Courts, Law and Procedure
Dinner Meeting of Committee on Law Reform
Dinner Meeting of Committee on Military Justice
Dinner Meeting of Committee on Municipal Affairs

January 10
Dinner Meeting of Committee on Broadcasting
Meeting of Legal Referral Service Security Defense Program
Meeting of Committee on Family Part of Supreme Court

January 11 Joint Meeting of Section on Administrative Law and Procedure and Section on Labor Law
Meeting of Committee on Domestic Relations Court
Dinner Meeting of Committee on Legal Aid
Round Table Conference, 8:15 P.M. Guest—Hon. Francis L. Valente, Justice of the Supreme Court of the State of New York

January 12 Meeting of Art Committee
Dinner Meeting of Committee on Copyright
Dinner Meeting of Committee on Insurance Law
Dinner Meeting of Committee on Municipal Court
Dinner Meeting of Committee on Taxation

January 16 Meeting of Committee on Anti-Trust Laws and Foreign Trade
Meeting of Young Lawyers Committee
Meeting of Judiciary Committee
Dinner Meeting of Committee on Medical Jurisprudence

January 17 *Stated Meeting of Association, 8:00 P.M. Buffet Supper, 6:15 P.M.*

January 18 Meeting of Committee on Admissions
Meeting of Committee on Arbitration
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation and Trade Marks
Dinner Meeting of Committee on Foreign Law

January 19 Meeting of Committee on Criminal Courts, Law and Procedure

January 23 Meeting of Section on Banking, Corporation and Business Law
Meeting of Library Committee

January 24 Dinner Meeting of Committee on Improvement of Family Law
Meeting of Legal Referral Service Security-Defense Program
Meeting of Committee on State Legislation

January 25 New York State Bar Association Section on Food, Drug and Cosmetic Law

January	26	New York State Bar Association Section on Antitrust Law
January	27	Annual Meeting of New York State Bar Association
January	28	Annual Meeting of New York State Bar Association
January	30	Dinner Meeting of Committee on Rent Control Dinner Meeting of Committee on Real Property Law
January	31	Dinner Meeting of Committee on Administration of Justice Dinner Meeting of Committee on Aeronautics Dinner Meeting of Committee on Admiralty Meeting of Legal Referral Service Security-Defense Program Meeting of Section on Litigation Meeting of Committee on State Legislation
February	1	Dinner Meeting of Committee on Bill of Rights Meeting of Section on Wills, Trusts and Estates
February	2	Dinner Meeting of Committee on Atomic Energy Dinner Meeting of Committee on Criminal Courts, Law and Procedure Meeting of Committee on Federal Loyalty-Security Program Meeting of Section on Taxation
February	3	Meeting of Committee on Federal Loyalty-Security Program
February	4	Meeting of Committee on Federal Loyalty-Security Program
February	5	Meeting of Committee on Federal Loyalty-Security Program
February	6	Dinner Meeting of Committee on Domestic Relations Court Dinner Meeting of Committee on Municipal Affairs Dinner Meeting of Committee on Professional Ethics
February	7	*Opening of Photographic Show, 4:30 P.M.* Meeting of Committee on State Legislation Dinner Meeting of Committee on Increase of Membership (Division 1) at Harvard Club
February	8	Dinner Meeting of Executive Committee Dinner Meeting of Committee on Increase of Membership (Division 2) at Harvard Club

February 9 Dinner Meeting of Committee on Criminal Courts, Law and Procedure
Dinner Meeting of Committee on Copyright
Dinner Meeting of Committee on Federal Legislation
Round Table Conference, 8:15 P.M. Guest to be announced
Dinner Meeting of Committee on Increase of Membership (Division 3) at Harvard Club

February 14 Meeting of Section on Jurisprudence and Comparative Law
Dinner Meeting of Committee on Rent Control
Meeting of Committee on State Legislation

February 15 Meeting of Committee on Admissions
Meeting of Committee on Arbitration
Dinner Meeting of Committee on Corporate Law
Meeting of Committee on Foreign Law
Dinner Meeting of Committee on International Law
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Meeting of Section on Taxation

February 16 Meeting of Committee on Criminal Courts, Law and Procedure

February 20 Dinner Meeting of Committee on Insurance Law
Meeting of Library Committee
Meeting of Section on Banking, Corporation and Business Law

February 21 Meeting of Committee on State Legislation

February 23 *Lecture by Hon. Oswald D. Heck, 8:00 P.M. Buffet Supper, 6:15 P.M.*

February 27 Meeting of Section on Corporate Law Departments
Dinner Meeting of Committee on Real Property Law

February 28 Meeting of Committee on State Legislation

February 29 Meeting of Section on Administrative Law
Dinner Meeting of Committee on Legal Aid

The Changing Practice of Law

By Harrison Tweed

THE FOURTEENTH ANNUAL BENJAMIN N. CARDOZO LECTURE
DELIVERED BEFORE THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK ON OCTOBER 27, 1955

I always stand on this rostrum in trepidation. But never before in trepidation as great as tonight's. The atmosphere is charged with the possibility of the most devastating default. There is not only the sense of insufficiency in comparison with predecessors but also the nervousness which the name "Cardozo Lecture" inspires—despite the fact that no man ever lived less terrifying than that sweet and sympathetic soul.

I cannot say that Judge Cardozo—somehow we of the New York Bar seek to retain him as ours by calling him Judge rather than Justice—was the first writer who aroused my interest in legal philosophy because it happened that James C. Carter's lectures at the Harvard Law School of some forty years ago were my appetizer. Then I turned to Cardozo's writing and found there what to every lawyer is a joy and an inspiration.

I should like to add this personal recollection of Judge Cardozo. In 1929 I was preparing to argue in the Court of Appeals a case involving the right to revoke an *inter vivos* trust. Some years before Cardozo had written an opinion in a similar case which, unless a very fine distinction were recognized, would be conclusive against us. We all agreed that we could win only if, as we put it, Judge Cardozo was willing to take back some of the things he had said by way of dictum in the earlier case. The other side was very sure that he would refuse. On the argument I had hardly stated the facts when Judge Cardozo saw the point and began helping me to make the distinction which permitted a decision in our favor.

It is certainly irrelevant but perhaps interesting that the

opinion was written by Judge Crane, who was rather more practical than intellectual. But I learned a lot when I remonstrated with him in chambers that the opinion contained a short paragraph which would perpetuate the very uncertainty in the law to eliminate which we had carried up this particular case. I had the temerity to suggest that the paragraph be dropped out in the final official opinion. Judge Crane told me very good-naturedly: "The trouble with you lawyers is that you pay too much attention to what we say in our opinions. I had to put that paragraph in to secure a majority in your favor." I remonstrated no further.

This has been a long introduction. Even now I have a few more preliminary words to say. This is a lawyer's lecture to lawyers. Pope said that "The proper study of mankind is man." So it is certainly permissible that lawyers should pay some attention to themselves and their brethren. As a generality they have failed to do so and with unfortunate consequences. My title is rather vague. So, to avoid perplexity on your part, let me say at once that what I am most concerned with is the problem of how lawyers should qualify themselves to best serve the public under known present and probable future conditions. While it is appropriate to make the inquiry from the point of view of the best interests of the public, it is nevertheless unquestionable that the better the service the profession gives the public the better will its own interests be served. Lawyers without clients are of no use to anybody—least of all to themselves and their families.

I shall concentrate on the practicing lawyer whose clients are able and willing to compensate him, if not according to the lawyer's ideal, at least pursuant to a satisfactory compromise. In passing I may mention that the organized Bar, taken as a whole, has been very slow to appreciate its opportunities and obligations to assure that those in the very low income group and those in what may be called the very moderate income group have been able to avail themselves of the services of lawyers. Even today the Bar is doing very much less than it should be doing.

There are three essential elements of a profession and to some extent what I have to say will emphasize them. They are: learn-

ing, public service and organization. In the legal profession, the three elements merge. The obligation of public service can be fulfilled only if the Bar gives the service which the public requires. The Bar can do this only if its members possess adequate education, training and experience. To assure this, proper organization is necessary.

I shall talk mostly about the element of public service—the contribution of practicing lawyers to the general welfare. In doing so I shall not be referring to service by lawyers directly to the government or a governmental subdivision. We all know how great this contribution has been not only in war time but in days of peace also. And, contrary to a very general illusion, it has been increasing rather than diminishing over the years. I repeat that I am concentrating on lawyers serving non-governmental clients. But I want to point out emphatically that the giving of advice or representation to the client who needs it constitutes public service in the truest sense. If this service were not available, every citizen would live in uncertainty and fear. But that is not all. The day to day work which the lawyer does for his clients is a contribution to the development of the law and to the administration of justice. What a lawyer does when he presents his case to a court for decision, or drafts a certificate of incorporation, or draws a will or a separation agreement, or secures a ruling from the Department of Internal Revenue, becomes a part of the warp and woof of the legal structure of the country.

Since I am talking about lawyers, it might be expected that I would draw you a picture or at least give you a definition of one. But that is beyond me. "The American Lawyer," which has the subtitle "A Summary of the Survey of the Legal Profession," begins with an attempt to do this and it is to be expected that when the Director of the Survey, Reginald Heber Smith, writes his final report we shall have the finished portrait. You must wait for that.

Surprisingly little has been written about lawyers which has literary merit and is reasonably accurate. Both biographers and autobiographers have had little success in their efforts to give a true picture of what a lawyer is and what he does. For the most

part novelists have perverted and exaggerated, which, of course, is fair enough for novelists but does not help the seeker for the truth. Poets have not bothered much about lawyers, although we have the recent statement by Archibald MacLeish that his legal training has been of great value to him in his teaching and writing. The best contribution is from the legal philosophers, who have not tried to say what lawyers are or do so much as what they ought to be.

It might help in picturing the lawyer to know why a man becomes a lawyer. There are no statistics on this and, of course, the reasons are many and conglomerate. Perhaps for a good many it is a process of elimination. If a man has no great acquisitiveness but wants to live comfortably, have children, educate them and make some provision for his widow; has no definite artistic or literary flair; is not facile in mathematics or things scientific but has an interest in the intellectual, and perhaps particularly in argument, analysis and logical presentation, orally or in writing; wants to be free to take a position on public questions and to play a part in the affairs of the community in which he lives and, perhaps above all, has confidence in his physical and mental ability to work hard enough and do good enough work to survive in keen competition—then the law seems to offer him the best chance for happiness.

No one needs to be told that there have been great changes in every aspect of life in this country in the last hundred years—changes in business, commerce, finance, science, politics and the general economy of the country. They have come at an increasing pace, particularly in the last few years. Obviously, these changes have had an impact upon the practice of law. There the changes have been mostly by way of addition and complication. The effort of the law to adapt to modern conditions could not have been expected to result in simplification or clarification—and it hasn't. Multiplication of statutes and court decisions, the establishment of administratve tribunals and the development of an unprecedented claim consciousness, which is by no means limited to the field of automobile accidents, have all played a part in

extending the area for the lawyer's work and multiplying its variations. The increases in taxation and the growth of labor unions have brought much legislation in both fields and this in turn has brought an enormous amount of negotiation and litigation. Did the lawyers appraise the situation and avail themselves of their opportunities to serve the public? They did not. They regarded the sort of work involved as largely beneath their dignity and requiring more reading and study than it was worth.

Meanwhile, laymen had made it their business to become proficient in the provisions of the tax and labor laws and the accounting and other problems involved. They promptly developed themselves into quasi-professionals and asserted their qualifications as against those of lawyers. And because they were specialists in the particular fields they were able in a great many of the matters brought to them to do the work just as well as lawyers and at a lower cost. The Bar did not compete intelligently or protest loudly until the revenue value of the business had been demonstrated. Then very largely it invoked the doctrine of the monopoly of lawyers to practice law and, asserting a broad definition, appealed to the courts for protection. It is irrelevant whether this was or was not the right approach. The point here is that the Bar as a whole was not alert to the relative benefits and detriments which the situation presented and lost business through a failure to qualify itself to do the work involved.

In spite of the inertia in the new fields of possible service to which I have referred, the impact of the broad changes in life in this country and particularly the development of big business, big government and big labor, compelled practicing lawyers to affirmatively make and negatively accept very substantial changes in the ways and means of practice. The question is whether these changes have been in the right direction and have gone far enough and not too far.

The answer would seem to be that the Bar has been slow to recognize the existence and the imperativeness of the demand for change and that it is only where the compulsion of the demand has been strongest that it has been adequately met. This is

natural. And it is excusable so long as the lag is not too great. There is a universal desire to retain old habits as long as possible and it is accentuated by the reluctance of lawyers to discard ideals which have stood solidly for many years. One ideal of the Bar is the sanctity of the personal relationship between attorney and client. Another is that the ethical standards of lawyers give the client a protection which he can obtain nowhere else.

At different times in the history of this country, lawyers have been called upon to work in various different branches of the law, notwithstanding that until something less than a hundred years ago the preoccupation of lawyers was largely in litigation. 1870 is taken as a milestone date in the development of the practice of the law as well as in so many other phases of life in America. But it was not until somewhat later that the so-called office lawyer fully developed in typical form. This was probably the first example of the adaptation of lawyers to the needs of their clients and prospective clients. Fundamentally the difference between the general practitioner and the office lawyer was analogous to the English distinction between the barrister and the solicitor although, of course, it was not nearly as clean-cut.

The next development was the gathering together of lawyers in sizable firms. There had always been partnerships but the device of the firm of half a dozen or more was not employed to any considerable extent until about the turn of the century. In the years since then the development has been continuous. It is a fact, however, that throughout the country sixty-eight percent of the lawyers practice alone and that in New York City the percentage is even higher. A great deal has been said and written in derogation of the development of the large law firm. It is frequently spoken of as commercialization of the Bar and of the practice of the law but so broadminded and well informed a lawyer as Justice Brandeis said, in 1905, that he thought this view not altogether correct. Robert T. Swaine, of the New York Bar answered the critics with his usual force, conviction and persuasiveness in an article in the American Bar Association Journal for February, 1949.

It seems to me that there has been an unwarranted association of thought whereby the law firm is regarded as the creature of big business. There is no necessary connection or relationship between the size of a firm and the size of any one or more of its clients. There are plenty of sizable law firms without any big corporate, partnership or individual client. The reason for the existence of law partnerships is not the possession of a big client but the need to bring together a group of lawyers collectively qualified to do the things that those of the public sought as clients want done and want done well.

The law firm makes available to its clients a number of lawyers, each of whom possesses at least one of the special skills needed by clients. Thus it comes about that, generally speaking, a firm must include a partner who spends most of his time in court and another who is thoroughly grounded and absolutely up-to-date in tax matters. A third must be expert in labor negotiations and be able to give sound advice in that area. There is a demand for one partner with the ability to advise business clients on broad and crucial questions of policy although he may be less expert in any one area of the law than his partners. Generally speaking, each client of the firm looks to one partciular partner as his lawyer—the lawyer to whom he brings his legal problem for initial discussion unless it happens to be of such a peculiarly specialized nature that this preliminary step would involve a waste of time. Thus, from the large firm there may be obtained by a client precisely the close and confidential counselling which is in the best tradition of the Bar.

When corporations began to take the place of individuals as a lawyer's clients, it was feared that there would be an impairment of the traditional relationship. To anyone who looks closely today it is clear that there was no basis for this fear. It arose from the erroneous conception that the relationship between the lawyer and his corporate client is not a human one but is an artificial one between a corporate entity on the one hand and a large partnership on the other. In fact, the advisory process between counsel and corporation in this: Most of the matters requiring

legal advice are comparatively minor and somewhat technical. They are considered and discussed and decided by a junior partner and a subordinate corporate officer. The relationship between them is almost precisely the same as that between the old-fashioned general practitioner and his client-friend of long standing. It is true that the corporate officer is not receiving advice on a personal matter but on a corporate question. But the interest of the corporation in the solution is much more indirect and remote than is the interest of the officer. His job depends upon his ability to get the right answer. And it is here that the lawyer, able to view the matter with detachment and impartiality but with understanding and sympathy, becomes indispensable to his opposite number. And as the result of the decision of many questions over a considerable period of time, the relationship becomes as intimate a one and contains as much reliance and confidence as any attorney and client relationship can yield.

This is the way that corporate advising operates all the way up and down the line. Each member of the firm is in constant contact with the corporate officers on his level—there are usually several of them to one lawyer. It generally happens that as the corporate officer goes up in the hierarchy so does the lawyer. Frequently the close business and legal association and the personal intimacy exist for twenty-five years or more. And it remains very intimate and thoroughly typical of the traditional ideal even when it exists between the highest officer of the corporation and the senior partner. The corporate interest in the matters considered by them may be greater but it is nonetheless a fact that the personal element is generally predominant. After all, the force which drives the lawyer to the hard work he must do is not the pay for the particular job or the continuation of his employment but the pride which he can take in the soundness of the advice given. Thus, although money may come from the corporation, the lawyer's satisfaction comes from having dealt successfully with the problem presented and that was the problem of the individual who headed the corporation.

The accusation that the big law firm becomes the creature of big business has been thoroughly answered many times. Logi-

cally, it is perfectly clear that the larger the law firm the more clients and more business it will have. And then no one client can mean as much financially to any of the partners as does the largest client of the lawyer who practices alone or in a small firm. Admittedly the situation is entirely different with respect to lawyers on the staff and payroll of a corporation. Not only is the corporation their sole source of income but because they have confined themselves to such limited work they have greatly reduced the possibilities of ever standing on their own legal feet.

The instance of the large law firm handling the problems of its clients, and particularly those created by big government and big labor, is an outstanding example of an adequate response to the demands of clients for the best possible service. I know of no critic who has asserted that the legal service given has been of anything but the finest quality. Certainly, if it be sound to look for proof in the pudding, we find it in the increasing demand for this sort of legal service.

I do not want to talk too much about the advantages of the law firm because my concern is not with the practice of the law as it is conducted by firms of sufficient size to permit of specialization among the partners but with the practice of the law as it is conducted by those who are not members of law firms. Reginald Heber Smith expounded the virtues of partnerships with understanding and insight at the 250th Anniversary of Columbia University. He included financial security and a regularity of income which no lawyer who practices alone can have, and the opportunity for friendships which flourish where there is a common interest and particularly for the friendships between a younger and an older lawyer which bring happiness to both of them. Finally, if there are enough partners, there comes to each an independence which is almost as great as that of the individualist who has no partners. In the big firm, and even in the sizable firm, there is too much going on for any partner to think that his participation in every matter is indispensable. It is just a matter of necessity that each minds his own business and this, of course, is as true outside of the big cities as it is in them.

Perhaps the most significant distinction between the individ-

ual practitioner and the member of a sizable firm is in the amount of his earnings as disclosed by the statistics, which are three or four years old but which are probably not essentially different today. There are 177,000 lawyers in private practice, of whom half are in cities of over 200,000 and half in smaller cities, towns and villages. Sixty-eight percent of them are individual practitioners, frequently called solos. Even in New York City where there are many law firms, at least sixty-eight percent of the practicing lawyers are solos. The average net earnings of all lawyers in the country as of 1951 was a little over $9,000. Probably it should be mentioned that this is considerably below the $13,000 figure for physicians and only a little above the $8,000 for dentists. The average earnings of physicians increased nearly three times between 1929 and 1951 whereas the average earnings of lawyers did not quite double.

The average net income of individual practitioners for 1948 was $5,700. For partners in law firms the average net income increased according to the number of partners, as follows:

Two partners	$ 8,000
Three partners	12,800
Four partners	16,600
Five to eight partners	20,500
Nine or more partners	27,200

I see comparatively little reason to worry about those who practice in partnerships or to question that by and large they meet reasonably well, although far from perfectly, the standards in quality of advice to clients which should be maintained if the Bar is to discharge its public obligations. The same thing is not true of those who practice alone, as do something over two-thirds of the lawyers in this country all the way up and down the line from the rural areas to the biggest metropolis. They might be divided into two groups, although there exist no figures and no information as to how many there are in each group. One would consist of those who have made no effort to concentrate and to become proficient in any particular field of the law. The other

would include those who have concentrated in one or two or perhaps three fields of law. Many lawyers have learned that most clients require a proficiency which the lawyer cannot give if he has spread his education and reading and experience over the entire legal territory. In order first to have clients and then to be able to conscientiously handle their legal problems, a proficiency is necessary which can be acquired only by a certain amount of specialization.

The position of the individual practitioner who has specialized is very different from that of the specialist partner in a sizable firm. He is dependent for his living upon enough business in the limited area of his expertness. It is a part of the picture that whereas the generalist is a time honored and long respected part of the profession, the specialist, who offers expertness in one or two segments of practice, is comparatively a recent addition, at least in anything like the number now required in the public interest and with anything like the expertness to meet the complications of life and business today.

In my opinion, the development of concentrators who undertake to make themselves expert should be encouraged although it should at the same time be watched to forestall abuses. It is undesirable that the evolution of specialization should produce an over-specialized and inlooking lawyer who cannot see the woods for the trees. Such a lawyer alone cannot give clients the sort of judgment and advice to which they are entitled. Association with a lawyer who has the broader point of view, wider experience and wiser judgment is essential.

How is the client to be assured in every case of the judgment of the generalist and the proficiency of the expert? It is not possible to make every generalist an expert in all fields or even in one or to guarantee that every specialist shall have the wisdom, broad viewpoint and wide experience which can only come with extraordinary ability, unusual education and a practice reaching into many fields.

The answer is, of course, that somehow the judgment of the generalist and the expertness of the specialist must be combined

for the benefit of the client. In an article in the American Bar Association Journal for December, 1955, Professor Charles W. Joiner has christened such a combination an "*ad hoc* partnership." He means by that a joint venture in the service of the client by two lawyers who cooperate to give the combination of judgment and technical knowledge to which the client is entitled. There is nothing mysterious about such a combination although it raises some problems.

The fixing of the relative compensations of the two lawyers in any single joint venture would seem to present no different problem from that which arises whenever two lawyers work for the same client. There may be differences of opinion and neither lawyer may be completely satisfied but because adjustment is necessary it is achieved without acrimony or loss of respect and confidence. The real worry is in connection with the future relations between the client and the two cooperating lawyers. But this has been exaggerated. Ordinarily, the combination will be created when the client consults his generalist lawyer on a question upon which the lawyer does not feel qualified to advise. The danger which this lawyer visualizes is that the client will, in the future, bring his legal problems directly to the specialist with whom he has been put in touch. There is no doubt that this danger exists but is it serious? The client is not apt to be so foolish as to by-pass his regular lawyer in favor of the specialist except on some narrow question where judgment is not involved and only a specialist is needed and qualified—a situation, in other words, in which the general practitioner should not, as a matter of ethics, attempt to advise. And, on the other side of the scale, it will often result that this *ad hoc* partnership will lead to others on the initiative of one or the other of the lawyers involved.

It might be suggested that the development of *ad hoc* partnerships would increase the cost of legal service. I do not think so. The record clearly discloses that the work done by formal partnerships is done more economically for the client. The lawyer who is unfamiliar with the problem presented to him must do

far more work and will therefore feel entitled to charge more than the specialist who can answer the question almost offhand. But if the client does pay more it is because he gets something that is more valuable. Nothing is more obvious than that the public will not pay more than it believes the service it receives is worth. The Bar must take its chances in the market place. The law is a profession but its clients are also customers. And it will not succeed by giving cheap service, which is not good service. The financial welfare of the Bar depends upon the volume of business which the public gives it. The mathematics are simple. The greater the use that the public makes of the profession the larger the aggregate earnings of the profession. The distribution of those earnings among the members of the profession will depend upon a number of considerations, the most important of which is the value of what each has to offer. Lawyers always have competed among themselves and it is proper that they should in order that the efficiency of the profession be maintained. By and large the share of the aggregate which each lawyer receives will depend upon what he contributes to taking care of the volume of service which the public seeks from the profession.

Along with the development of the number and intensity of concentrators, there has come the natural inclination on their part to flock together. This has been evidenced by the increase in the number of bar association committees and sections and the number of lawyers who participate in their activities. For the most part these groups may be called interest groups, meaning that they are brought together because of a common interest and without any test of proficiency. Any member of an association may join any or all of its groups. In securing prominence within the group, the political art is perhaps just as useful as the degree of legal expertness. Some of them are known as "bread and butter" sections and high office or even moderately high office in them frequently produces legal business. But it is still a fact that to be a member or hold office no test of competence in the particular field of law is required.

But organizations inspired by motives other than interest and fraternization are growing up. First of all, there is the National Association of Claimants' Compensation Attorneys. Then there is the American College of Trial Lawyers, which makes an honest effort to assure that each member be well qualified as a trial lawyer and aspires to have among its membership only those to whom other lawyers may turn with confidence when looking for trial counsel. Presumably it would be happy if its reputation and knowledge of its existence and its membership should spread beyond the ranks of the Bar so that laymen might turn there in search of a good court lawyer. Here in New York State I have heard the suggestion that there be organized a small, select group of specialists in the field of income, gift and estate taxation, which would set high standards of proficiency as a condition to membership. This would seem a perfectly normal and logical development. A similar suggestion has been made for postgraduate training in advocacy at a law school in some metropolitan center available to a limited number of young lawyers and to be instructed by practicing advocates. It would be known as an Institute for Practical Training in the Art of Advocacy. Clearly there is an urge among lawyers, and perhaps particularly among younger lawyers, to make themselves and their brethren at the Bar better lawyers through special training and concentration in practice. The satisfaction of this urge can be of great value to the Bar. But it can also result in fragmentation of the profession and in over-specialization in education and practice.

If no affirmative action is taken by the organized Bar or by influential lawyers, the present trend will continue. One point of view counsels avoidance of affirmative action and, notwithstanding the known risks of over-specialization on the one hand and loss of business to the profession because of a lack of expertness on the other hand, leave everything to fate. That would be to repeat the errors of the past, when lawyers neglected their opportunities in the early development of administrative or quasi-administrative law. Certainly it would be unfortunate for a learned and formally organized profession to perpetuate the

nineteenth century theory of *laissez faire* and to ignore a serious internal problem.

Another alternative would be to try to discourage the spread or intensification of specialization. This would seem to be an attempt to reverse the course of human events. It does not appeal to me personally and it is disinterestedly supported by very few lawyers. Furthermore, it is hard to visualize a procedure to accomplish such a purpose without disastrous results. If the public were deprived of the expertness it requires of lawyers, it would be very quick to turn somewhere else, and if legislative help were necessary to overcome the obstacle of the Bar's monopoly in the practice of the law, the public could undoubtedly get it. Is it not the better alternative that the Bar, on the one hand, wholeheartedly encourage proficiency and specialization and, at the same time, do its utmost to guard against over-specialization and fragmentation?

I have tried to tell the story of what individual lawyers have done on their own initiative and without leadership to make themselves better lawyers through concentration in a limited field and to abandon the attempt to be all things to all clients. It remains to ask what the organized Bar has done. The short answer is "almost nothing." But I should mention, however, the abortive attempt of two or three years ago.

Robert G. Storey, writing as President of the American Bar Association in its Journal for February, 1953, said:

> "The legal profession has not kept pace with the rapidly changing events and demands of our time. Admission to the Bar is a license to a lawyer to perform almost any legal operation that an unsuspecting client may invite. The neophyte lawyer is automatically certified as competent to advise a corporation on its tax liabilities, to draw oil unitization agreements, and to negotiate consent decrees in antitrust suits."

It resulted that two special committees were appointed by two successive presidents of the American Bar Association. I was a

member of both of them. Each reported in favor of a thorough study of the problem and action designed to encourage specialization and safeguard against excesses. A Subcommittee of the Board of Governors reported along the same line to the House of Delegates in March, 1954. The House adopted resolutions to the effect:

> "1. That the American Bar Association approves in principle the necessity to regulate voluntary specialization in the various fields of the practice of the law for the protection of the public and the bar, and
>
> "2. That the American Bar Association approves the principle that in order to entitle a lawyer to recognition as a specialist in a particular field he should meet certain standards of experience and education, and
>
> "3. That the implementation, organization and financing of a plan of regulation to carry out such principles is delegated to the Board of Governors, subject to final approval by the House of Delegates."

The Board of Governors arranged for a hearing in October, 1954, at which, as is usual, there were more objectors than supporters of the proposal. The Board then reported to the House of Delegates in August, 1955, that it had decided not to present to the House of Delegates the plan which it had prepared because "it had reached the conclusion that the plan is not feasible." This report of the Board was approved by the House without discussion on this point.

I am not here to argue for the plan recommended by the Subcommittee of the Board of Governors and approved in principle by the House of Delegates. Instead I will state to you, as accurately as I can, the arguments which were made for and against the plan. In reality they were not designed, on the one hand, to support the precise details of the plan or, on the other hand, to oppose those details. For the most part, they were arguments in favor of or against the development and recognition of specialization in the practice of law. Indeed, it may be said with reasonable

accuracy that those who went on record as in favor of the plan were chiefly inspired by the desire that lawyers be better qualified and more expert and that those on the other side were moved largely by their idealistic conception of every lawyer as adequate in all matters and in all situations.

First of all, there is the argument that the law is a seamless web, that a lawyer either knows it all or is no lawyer. There may have been justification for this in the past when the essential of a lawyer was that he approach a problem in a spirit of detachment and with a mind trained to find the logical solution, when, as a hundred years ago, the number of reported cases decided by our federal and state courts was infinitesimal compared with the present figure, when the volume of statute law was a fraction of what it is today and when administrative law and its numerous subdivisions were unknown. But it simply is not true today. A fine mind, developed by a college education and trained to the legal approach by a law school course, is not enough.

If lawyers are to be able to compete with non-lawyers who have made themselves expert in a particular field, it is certain that they must devote a large part of their time to training and experience in that field. This will not involve any loss of the special qualifications and abilities that are the traditional possessions of lawyers—ethical standards, complete integrity and loyal detachment. Neither does it mean that the lawyer who, because of disinclination or because the particular locality in which he practices does not demand it, has remained a general practitioner will perish from the earth. Personally, I am confident that the demand of the public, particularly in the smaller communities, for the sort of advice and representation which the all-around lawyer can give is sufficient to assure the perpetuation of the traditional type of lawyer side by side with his specialist brother provided, however, that he frankly admits his limitations in special fields and insists on the cooperation of an expert whether he be a lawyer or a layman when that is appropriate. But, if I am wrong, then what is the use in trying to preserve the generalist in order that he may go through life faithful to his ideals but without

clients? To the extent that the Bar loses business to non-lawyers, there will be that much less business for lawyers who are either specialists or generalists. Clearly, the specialist is necessary in order that the Bar may have the largest possible clientele.

A second objection is that it is a disparagement of lawyers to label them as real estate lawyers or tax lawyers or labor lawyers. But is it? Is it a disparagement of an historian that he studies and writes chiefly about the Renaissance? Or of a scientist that he specializes in electronics? If a human being has studied, trained and worked—has given his all—in as wide a field as it is possible for a human being to cover, what more can be asked? Are lawyers to set for themselves a standard of mediocrity in an excessively broad field with the result that laymen concentrate in a small area of the broad expanse which is rightfully the domain of lawyers and give the public an expertness which the lawyers lack?

Only slightly different is the plaint of some lawyer concentrators: "We have spent years persuading the Bar and the public that we are just as much lawyers as any of the rest of you and now you want to classify us as specialists, thereby implying that that is all that we are." The fallacy here is in the implication. Such a lawyer is properly described as a lawyer and something more—a lawyer with special expertness. A learned profession is never the less of a profession for being more learned and a member of it loses no standing because he possesses special learning.

Those who are most vocal against specialization complain that to recognize specialization is to create the possibility that the monopoly of the Bar will be broken down. I do not suggest that laymen should be allowed to hold themselves out as qualified to enforce or protect the legal rights of others, either in or out of court. Special qualifications are properly required, but we must be reasonable in defining the limits of the practice of the law. The theory of those who complain that laymen will be encouraged to invade the legal area is that once lawyers admit that no lawyer is completely competent in every field, then the whole argument of the indispensability of the lawyer and his superiority to the layman breaks down. This seems to me unsound. The

recognition of a lack of omniscience is no admission that the lawyer lacks other valuable attributes. The true analysis is that there should be combined with general legal training and devotion to standards of integrity, which are the essential attributes of the lawyer, the special expertness which may be acquired and possessed by either a lawyer or a layman. The position that everyone who is admitted to the Bar is competent to advise any client on any problem is untenable. The public is beginning to recognize this, to look further than the license of the lawyer and to ask whether in fact he is competent to take care of all the problems which heretofore have been regarded as legal problems. We are fooling ourselves if we let ourselves believe that we are fooling the public. If the monopoly of the Bar depends for its existence on the myth that every lawyer is competent to advise any client on any matter and can perform with equal proficiency in a police court case and in a complicated corporate reorganization, then the monopoly cannot survive.

It is stoutly maintained by some that to develop legal specialists would increase the cost of legal services. This, of course, is a complete fallacy. Nothing is as expensive, both from the point of view of the cost of the product and the possibility of lack of quality as the advice which a lawyer who knows a little about the problem laboriously prepares and offers to his client. The lawyer who is more or less continuously engaged in a concentrated field of work is able to handle a matter within it much more expeditiously and with a much greater probability of producing the right answer.

There is basis for suspicion that one of the reasons for opposition to specialization within the organized Bar is the fear on the part of the leaders of the interest groups to which I have referred and their potential successors that the establishment of specialty groups with membership conditioned on qualifications would hurt, if not destroy, the standing of the existing groups. It seems to me that there is no basis for the fear. The existing Bar association sections and committees are entirely interest and social groups. They can perfectly well continue side by side with such

proficiency or expert groups as may develop. Looking at it from a different angle, it is entirely possible that if these sections and committees would only try, they could be the leaders in the encouragement and direction of specialization in the interest of the Bar and the public and thereby secure for themselves a standing far above that which they now have. It is difficult to understand their unwillingness to take this leadership and to become the nucleus for the effectuation of some such plan as was approved in principle by the Board of Governors and the House of Delegates of the American Bar Association.

It is clear to me that the profession is faced with a situation which, if not of recent origin, is at least new in the sense that it has become acute in the last decade; that it presents alternative dangers of a failure, on the one hand, to do all that is necessary to meet the public demand for expert legal service and, on the other hand, to supervise the development so that it will not be carried to the extent of reducing lawyers to the role of narrow technicians; that it is a situation which other professions and quasi-professions, notably the medical profession, have found it advisable to study and direct; and, finally, that it is one concerning which the organized Bar is doing nothing.

As I have said, I hold no brief here for the plan conceived by officers and committees of the American Bar Association, then crystallized by its Board of Governors and then finally put to death by them. I go no further tonight than to say that the situation calls for a thorough and disinterested study, preferably by some group which is not dominated by lawyers, nor by lay specialists, and supplemented by recommendations which might either outline procedures or advise against any action.

Having said that such a survey is all that is necessary at the moment, I might well stop here and let you go into the Reception Hall and to the well deserved refreshments which await you there. But I cannot refrain from going on to suggest some of the things which should be done without waiting for such a survey and which, it seems to me, could do no harm and might well prove helpful in preparing the ground for such action as a survey may lead to.

In the pre-admission education of lawyers, I would be one of the last to suggest any attempt to train specialists. The more specializing that lawyers are going to indulge in in practice the greater the need for fundamental knowledge of legal principles and the ability to think and analyze and decide in the way that a lawyer should. But for at least three reasons there must be a limited opportunity for the law student to concentrate. One is so that the foundation may be laid for specialization later on. Another is because it is an essential in the educational process that the student measure the depths of at least one subject. The third is that the educational process should seek to discover and disclose to the student the field in which he has the most aptitude. I would moreover, like to see the law schools become a little more realistic about the practical need for specialization in practice. I have the impression that in their proper resistance to the demand for more practical training, law school faculties have emphasized the need for foundamental learning without at the same time indicating the importance of concentration in actual practice.

I have been speaking of education before admission to the Bar. But after admission to the Bar the law schools still have a responsibility which they have not yet even begun to meet. It is generally recognized that lawyers have so far done little to carry on their education in anything like a formal and organized way. They have a fairly good excuse in the comparatively inadequate nature of what has been offered to them. This is said with no intention of belittling what has been done in New York City by the Practising Law Institute, and throughout the country by the Committee on Continuing Legal Education and the other organizations and groups which have endeavored to give lawyers an opportunity to perfect themselves at the same time that they continue practice. It is a fact that the law schools, with the exception of a few in large cities, have developed no courses calculated to be of value to the practicing lawyer and particularly to one who, for a number of years, has concentrated his work in a particular field of law.

There is every reason why law schools should proceed to rectify the situation and to fill the gaps. Today the physical facilities of

the law schools are unused for a quarter of each year, which is something of an economic waste. And there are many faculty members who need to supplement their salaries in the summer months but find it difficult. A further appeal is, of course, the opportunity to improve the training of lawyers to meet the demands of today and tomorrow. It may be added that a law school summer course for practicing lawyers would be by no means a form of punishment but would offer the renewal of pleasant associations, the meeting of lawyers from other states and the hobnobbing both with those who are engaged in a similar sort of practice and with those who are not.

This is the most that we can expect of the educational institutions until there has been more definite development of a policy to encourage specialization. There is no reason to expect anything, in the near future at least, from the national organization of the Bar. I would have hopes that local bar associations, through their committees on legal education or otherwise, would give the general subject consideration and advise their members of their conclusions. But the groups from which action looking towards the development of healthy specialization is to be confidently expected consist of the lawyers who in their practice specialize in a limited field, who take pride in their own qualifications and wish to see a high standard set for themselves as well as for the others who practice in the same field. It does not make much difference whether their motivation is public duty or self-interest. The two things lead to the same result. These groups must overcome any sense of inferiority which may afflict them and must develop a pride in their attempt through concentration to make themselves more proficient and therefore more useful to themselves, to their profession and to the public.

If I am right that there is a demand for greater expertness by lawyers in various branches of practice, then those lawyers who have acquired that expertness will be rewarded by professional employment. And no one seems to disagree with me that there is that demand and that it is a growing one. It seems proper, however, that such lawyers should receive some recognition, not only

because they are entitled to it and it would be an inducement to others, but because it is in the interest of the profession and of its members, generalists or specialists, that those who are thoroughly qualified in particular fields be identified and recognized. It is here that representation of an expertness which does not exist must be guarded against. The present system whereby a lawyer acquires a reputation as qualified to handle certain matters by virtue of membership in some bar association section or in some voluntary and independent interest group which sets no standards of proficiency, is unhealthy. But membership in a group which has set and maintained high standards of proficiency as a condition to membership will constitute no misrepresentation and may be relied upon. It will be helpful to the Bar and to the public.

It is not for me—a specialist only in specialism—to prescribe precise details of organization for each specialty group. A study of the sort which I have recommended would be a guide and there are precedents in other professions and considerable information in the reports of the American Bar Association special committees and the subcommittee of the Board of Governors.

But I want to make it clear that I am not suggesting any requirement that a lawyer must be a member of any proficiency group in order to practice his profession as he pleases. The only power to impose such a requirement resides in the State. The tradition that a lawyer is an all-around lawyer is too deep rooted to expect that it can be broken down—at least in the foreseeable future. And the general practitioner is, as I have said, just as necessary as the specialist. But the practice of law is a competitive profession. No lawyer has the right to complain that another secures professional advancement because he has given himself a better education or has acquired more expertness. The more that lawyers secure clients because of their qualifications, the better. What is to be prevented is the securing of undeserved advancement. And particularly the securing of clients in matters outside or beyond the competence of the particular lawyer. For that is detrimental to the profession.

If it can be brought about that concentrators in one or more fields of law become really expert, and their expertness is evidenced by some sort of certification, then these results at least will be achieved:

1. There will be a greater number of well qualified lawyers.
2. They will be identifiable as such by other lawyers.
3. They will, by their expertness, bring to the Bar more business, thus benefitting not only the specialists but also the generalists because a part of the new business will be appropriate for handling by each group.
4. The public will not have to turn to laymen to get the service which it needs and to which it is entitled from the Bar.

One last word. The opportunities to aid the cause of modernization in the practice of the law extend to all lawyers. They can contribute in various ways. They can first overcome in their own minds and then eliminate from the minds of others the traditional concept that a lawyer can be all things to all clients. They can give open-minded thought to the whole subject of raising the standards of practicing lawyers and particularly doing so through a specialization which brings increased competence but does not impair any of the qualities essential to the useful adviser. They can stand up for the partnership device, not so much as a means of making more money for its members as in the interest of better legal service to the public. They can stimulate interest in continuing legal education. The most important thing of all is that they work for a reversal of the traditional opposition of American lawyers to specialization and that they show a willingness—more than that, a desire and determination—for once, before it is too late, to make an intelligent and intensive effort to meet, rather than to ignore, a crucial professional problem.

Committee Report

COMMITTEE ON PROFESSIONAL ETHICS

OPINION NO. 808

Question: Attorney "A" performed legal services for a client and was finally discharged before completion of the services. "A" had in his possession $2,500.00, which he was holding for the client. "A" claimed this money as his legal fees. So far there had been no proceeding instituted to determine whether his services were worth the $2,500.00 retained by him. "A" also retained all of such client's legal papers on which he claims an attorney's lien. Attorney "B" now represents the same client. When "B" phoned "A" for some data involved in a real estate closing for the purpose of preparing a 1954 income tax return for the client, "A" claimed that his attorney's lien on the paper protected him against his giving "B" this information. (1) May Attorney "A" retain possession of both the cash reserve and the legal papers? (2) If Attorney "A" may retain the papers, is he under a duty to supply such figures therefrom as are needed by Attorney "B" for the preparation of the client's income tax return?

Opinion: If the cash is adequate—and here it appears to be as great as Attorney "A's" estimate of what the fee should be— there is no right to retain legal papers as well. The Court of Appeals has stated that "where the retention of papers by an attorney serves to embarass a client the attorney should be required to deliver up the papers upon receiving proper security for his compensation, because insistence upon his lien under such circumstances is not in accordance with the standard of conduct which a court may properly require of its officers." *Robinson* v. *Rogers,* 237 N.Y. 467, 473.

November 9, 1955

OPINION 809

Question: An attorney representing a lending institution has issued blanket instructions to a title company that the attorney's commission customarily paid by the title company on mortgage policies is to be made to such attorney's office. The lending institution, on the other hand, has informed the mortgage applicant that he will be charged a certain sum for attorneys' fees for counsel representing the lending institution, and that he will be charged separately the full cost of a mortgage insurance policy. There was no disclosure by the lending institution prior to the closing of the real estate transaction involved that the title company will pay a commission to the attorney for the lending institution. Without such disclosure, is the practice described deceptive, and if so, is the attorney for the lending institution a party to such deception?

Opinion: If the practice described is engaged in without disclosure to the mortgage applicant, it is deceptive; and if the attorney for the lending institution knows that the mortgage applicant is being subjected to such deception and such attorney does not make clear to the mortgage applicant that he, the attorney, is receiving the title company commission as well as a fee, he is a party to the deception.

December 5, 1955

The Library

SIDNEY B. HILL, *Librarian*

"THE PLACE OF LAW IN DEMOCRATIC SOCIETY"

SUPPLEMENTARY LIST 1949–55

Law in a democratic society grants us the assurance that life tomorrow will be much like life today. It provides the machinery for orderly reform and is the buttress against tyrannical force.

Chief Justice Vanderbilt has stated "that the modernization of law calls for help"—from judges and lawyers who have the knowledge, experience and wisdom to give it. In addition he has emphasized the great need for the cooperation of the laymen interested in the law, "it is they that can jar the complacency of the legal mind."

The following reading list has been prepared for both the lawyer and the layman and supplements the one issued in THE RECORD for December 1949.

Allen, Carleton K. Law in the making. Oxford, Clarendon Press, 1951. 626p.

Andrews, Frank E. Corporation giving. N. Y., Russell Sage Foundation, 1952, 361p.

Appleby, Paul H. Morality and administration in democratic government. Baton Rouge, Louisiana State Univ. Press, 1952. 261p.

Assn. of the Bar of the City of New York. Bad housekeeping, the administration of the New York Courts. Judicial Printing Co., 1955. 159p.

Assn. of the Bar of the City of New York. If you are arrested. 1955. 5p.

Barth, Alan. Government by investigation. N. Y., Viking Press, 1955. 231p.

Beaney, William M. The right to counsel in American courts. Ann Arbor, Univ. of Mich. Press, 1955. 268p.

Berle, Adolf A. Jr. Twentieth century capitalist revolution. New York, Harcourt, 1954. 192p.

Beuscher, Jacob H. Law and the farmer. N. Y., Springer Pub. Co., 1953. 406p.

Biggs, John. The guilty mind, psychiatry and the law of homicide. N. Y., Harcourt, Brace and Co., 1955. 236p.

Blaustein, Albert P. The American lawyer, a summary of the survey of the legal profession. Chicago, Univ. of Chicago Press, 1954. 360p.

Botein, Bernard. Trial judge. N. Y., Simon and Schuster, 1952. 337p.

Brady, Joseph H. Confusion twice confounded, the first amendment and the Supreme court. S. Orange, Seton Hall Univ. Press, 1954. 192p.

Breitel, Charles D. Know your courts. 1955. 12 Off the Agenda. 1–3.

Brierly, James L. The law of nations. Oxford, Clarendon Press, 1955. 331p.

Brown, Louis M. Manual of Preventive law. N. Y., Prentice-Hall, 1950. 346p.

Brownell, Emery A. Legal aid in the United States, a study of the availability of lawyers' services for persons unable to pay fees. Rochester, Lawyers Co-operative Pub. Co., 1951. 333p.

Busch, Francis X. Guilty or not guilty. 1st ed. Indianapolis, Bobbs-Merrill, 1952. 287p.

Cahill, Fred V. Jr. Judicial legislation, a study in American legal theory. N. Y., Ronald Press Co., 1952. 164p.

Cahn, Edmond. The moral decision. Bloomington, Indiana Univ. Press, 1955. 342p.

Cahn, Edmond. Supreme court and supreme law. Bloomington, Indiana Univ. Press, 1954. 250p.

Cairns, Huntington. Legal philosophy from Plato to Hegel. Baltimore, John Hopkins Press, 1949. 583p.

Cheever, Daniel S. American foreign policy and the separation of powers. Cambridge, Harvard Univ. Press, 1952. 244p.

Cohen, Morris R. Reason and law, studies in juristic philosophy. Glencoe, Ill., Free Press, 1950. 211p.

Cohen, Morris R. and Cohen, Felix S. Readings in jurisprudence and legal philosophy. N. Y., Prentice-Hall, 1951. 944p.

Commager, Henry S. Freedom, loyalty, dissent. N. Y., Oxford Univ. Press, 1954. 155p.

Corwin, Edward S. The Constitution and what it means today. Princeton, N.J., Princeton Univ. Press, 1954. 340p.

Cross, Harold L. The people's right to know. N. Y., Columbia Univ. Press, 1953. 405p.

Crosskey, William W. Politics and the Constitution in the history of the United States. Chicago, Univ. of Chicago Press, 1953. 2v.

Curtis, Charles P. Its your law. Cambridge, Harvard Univ. Press, 1954, 178p.

Curtis, Charles P. It's your law. Cambridge, Harvard Univ. Press, 1954. Philadelphia, American Law Inst., 1954. 130p.

Denning, Alfred T. The changing law. London, Stevens, 1953. 122p.

Derriman, James. Pageantry of the law. London, Eyre and Spottiswoode, 1955. 224p.

Desmond, Charles S. Sharp quillets of the law. Introduction by Harrison Tweed. Buffalo, Dennis & Co., 1949. 245p.

Deutsch, Albert. The trouble with cops, study of police departments, procedures and corruption. N. Y., Crown Pub., 1955. 233p.

Diamond, A. S. Evolution of law and order. London, Watts, 1951. 342p.

Douglas, Paul H. Ethics in government. Cambridge, Harvard Univ. Press, 1952. 114p.

Douglas, William O. An almanac of liberty. Garden City, N. Y., Doubleday, 1954. 409p.

Dressler, David. Probation and parole. N. Y., Columbia Univ. Press, 1951. 237p.

Drinker, Henry S. Legal ethics. N. Y., Columbia Univ. Press, 1953. 448p.

Elkouri, Frank. How arbitration works. Washington, Bureau of National Affairs, Inc., 1952. 271p.

Emerson, Frank D. Shareholder democracy, a broader outlook for corporations. Cleveland, Western Reserve Univ. 1954. 242p.

Emerson, Thomas I. and Haber, David. Political and civil rights in the United States, a collection of legal and related materials. Buffalo, Dennis, 1952. 1209p.

Ernst, Morris L. Utopia, 1976. N. Y., Rinehart, 1955. 305p.

Fleming, Harold. Ten thousand commandments, a story of the antitrust laws. N. Y., Prentice-Hall, 1951. 206p.

Frank, Jerome. Courts on trial, myth and reality in American justice. Princeton, Princeton Univ. Press, 1949. 441p.

Frank, John P. Mr. Justice Black. N. Y., Alfred A. Knopf, 1949. 357p.

Freeman, Kathleen. The paths of justice. London, Lutterworth Press, 1954. 191p.

Freund, Paul A. On understanding the Supreme Court, Bost., Little, Brown, 1949. 342p.

Friedman, Wolfgang. Legal theory. 2 ed. London, Stevens and Sons, 1949. 470p.

Galbraith, John K. American capitalism, concept of countervailing power. Boston, Houghton Mifflin, 1952. 217p.

Gardner, Earl S. The court of last resort. N. Y., Sloane, 1952. 277p.

Gellhorn, Walter. Children and families in the Courts of New York City. Dodd, Mead and Co., 1954. 403p.

Glueck, Sheldon. Crime and correction. Cambridge, Mass., Addison-Wesley, 1952. 273p.

Goodhart, A. L. English law and the moral law. London, Stevens, 1953. 151p.

Gough, John W. Fundamental law in English constitutional history. Oxford, Clarendon Press, 1955. 229p.

Griffith, Ernest S. The American system of government. London, Methuen, 1954. 202p.

Griffith, Ernest S. Congress, its contemporary role. N. Y., N. Y. Univ. Press, 1951. 193p.

Griswold, Erwin N. The fifth amendment today, three speeches. Cambridge, Harvard Univ. Press, 1955. 82p.

Guttmacher, Manfred S. Psychiatry and the law. N. Y., Norton, 1952. 476p.

Hale, Robert L. Freedom through law. N. Y., Columbia Univ. Press, 1952. 591p.

Hall, Jerome. Living law of democratic society. Indianapolis, Bobbs-Merrill, 1949. 146p.

Hall, Jerome. Theft, law and society. 2 ed. Indianapolis, Bobbs-Merrill, 1952. 398p.

Hamburger, Max. Morals and law, the growth of Aristotle's legal theory. New Haven, Yale Univ. Press, 1951. 191p.

Hand, Learned. Spirit of liberty, papers and addresses of Learned Hand. N. Y., Knopf, 1952. 262p.

Hannah, Harold W. Law on the farm. N. Y., Macmillan Co., 1952. 399p.

Harno, Albert J. Legal education in the United States. San Francisco, Bancroft-Whitney Co., 1953. 211p.

Harper, Fowler V. Problems of the family. Indianapolis, Bobbs-Merrill, 1952. 806p.

Hoebel, Edward A. The law of primitive man, a study in comparative legal dynamics. Cambridge, Harvard Univ. Press, 1954. 357p.

Hofstadter, Samuel H. The fifth amendment and the Immunity act of 1954. N. Y., 1954. 49p.

Howe, Mark. Cases on church and state in the United States. Cambridge, Harvard Univ. Press, 1952. 393p.

Howell, Herbert A. The copyright law. 3 ed. Washington, Bureau of National Affairs, 1952. 376p.

Jackson, Richard M. The machinery of justice in England. Cambridge, Eng., Univ. Press, 1953. 371p.

Jackson, Robert H. The Supreme Court in the American system of government. Cambridge, Harvard Univ. Press, 1955. 104p.

Jones, Howard M. The pursuit of happiness. Cambridge, Harvard Univ. Press, 1953. 168p.

Jurisprudence in action, a pleaders anthology. N. Y., Baker, Voorhis, 1953. 494p.

Kahn, Alfred J. Court for children, a study of the New York City children's court. N. Y., Columbia Univ. Press, 1953. 359p.

Kelsen, Hans. The communist theory of law. N. Y., Praeger, 1954. 408p.

Kennan, George F. Realities of American foreign policy. Princeton, N. J., Princeton Univ. Press, 1954. 120p.

Kirk, Russell. The conservative mind, from Burke to Santayana. Chicago, Regnery, 1953. 458p.

Konvitz, Milton R. Bills of Right reader, leading constitutional cases. Ithaca, Cornell Univ. Press, 1954. 591p.

Lawson, Frederick H. A common lawyer looks at the civil law. Ann Arbor, Univ. of Mich. Law School, 1953. 238p.

Leopold, Richard W. Elihu Root and the conservative tradition. Boston, Little, Brown, 1954. 222p.

Lindey, Alexander. Plagiarism and originality. N. Y., Harper, 1952. 366p.

Lissitzyn, Oliver J. The international court of justice, its role in the maintenance of international peace and security. N. Y., Carnegie Endowment for International Peace, 1951. 118p.

Marke, Julius J. The Holmes reader. N. Y., Oceana Publications, 1955. 282p.

Mason, Alpheus T. American constitutional law. N. Y., Prentice-Hall, 1954. 669p.

Mayers, Lewis. The American legal system. N. Y., Harper, 1955. 589p.

O'Brian, J. L. National security and individual freedom. Cambridge, Harvard Univ. Press, 1955. 84p.

Paschal, Joel F. Mr. Justice Sutherland, a man against the state. Princeton, Princeton Univ. Press, 1951. 267p.

Patterson, Edwin W. Jurisprudence, men and ideas of the law. Brooklyn, Foundation Press, 1953. 64p.

Paul, Randolph E. Taxation in the United States. Boston, Little, Brown, 1954. 830p.

Phillips, Orie I. Conduct of judges and lawyers. Los Angeles, Parker, 1953. 247p.

Pilpel, Harriet F. Your marriage and the law. N. Y., Rinehart, 1952.

Pound, Roscoe. An introduction to the philosophy of law. Rev. ed. New Haven, Yale Univ. Press, 1954 201p.

Pound, Roscoe. The lawyer from antiquity to modern times. St. Paul, West, 1953. 404p.

Pusey, Merlo J. Charles Evans Hughes. N. Y., Macmillan, 1951. 2v.

Puttkammer, Ernst W. Administration of criminal law. Chicago, Univ. of Chicago Press, 1953. 249p.

Reuschlin, Harold G. Jurisprudence, its American prophets. Indianapolis, Bobbs-Merrill, 1951. 527p.

Rodell, Fred. Nine men, a political history of the Supreme court from 1790 to 1955. N. Y., Random House, 1955. 338p.

Rossiter, Clinton. Supreme court and commander-in-chief. Ithaca, Cornell Univ. Press, 1951. 145p.

Schiffer, Walter. The legal community of mankind, a critical analysis of the modern concept of world organization. N. Y., Columbia Univ. Press, 1954. 367p.

Seagle, William. Law, the science of inefficiency. N. Y., Macmillan, 1952. 177p.

Shartel, Burke. Our legal system and how it operates. Ann Arbor, Univ. of Michigan Law School, 1951. 629p.

Spring, Samuel. Risks and rights in publishing, television, radio, motion pictures, advertising and the theater. N. Y., Norton. 1952. 385p.

Stone, Julius. Legal controls of international conflict. N. Y., Rinehart, 1954. 851p.

Stryker, Lloyd P. Art of advocacy, a plea for the renaissance of the trial lawyer. N. Y., Simon and Schuster, 1954. 306p.

Taylor, Eleanor K. Public accountability of foundations and charitable trusts. N. Y., Russell Sage Foundations, 1953. 231p.

Taylor, Telford. Grand inquest, the story of congressional investigations. N. Y., Simon and Schuster, 1955. 408p.

Tweed, Harrison. The Legal Aid Society, New York City, 1876–1951. N. Y., Legal Aid Society, 1954. 122p.

Vanderbilt, A. T. Challenge of law reform. Princeton, Princeton Univ. Press, 1955. 204p.

Vanderbilt, A. T. Men and measures in the law. N. Y., A. Knopf, 1949. 156p.

Vecchio, Georgio Del. Justice, an historical and philosophical essay. Edinburgh, Univ. Press, 1952. 236p.

Vinogradoff, P. Common sense in law. 2 ed. London, N. Y. Oxford Univ. Press, 1951. 102p.

Williams, C. Dickerson. Problems of the fifth amendment. N. Y., 1955. 33p.

Windolph, Francis L. Leviathian and natural law. Princeton, Princeton Univ. Press, 1951. 147p.

Wormser, Rene A. Personal estate planning in a changing world. 6 rev. ed. N. Y., Simon and Schuster, 1952. 271p.

Wyzanski, Charles E. A trial judges freedom and responsibility. N. Y., Assn. of the Bar of the City of New York, 1952. 33p.

Yankwich, Leon R. Its libel or contempt if you print it, a practical book on libel, contempt, and kindred topics for lawyers and for students and workers in the newspaper field. Los Angeles, Parker and Co., 1950. 612p.

Zeller, Belle, ed. American state legislatures, reports. N. Y., Crowell, 1954. 294p.

Zilboorg, Gregory. The psychology of the criminal act and punishment. N. Y., Harcourt Brace and Co., 1954.

Zinn, Charles J. How our laws are made. West Publishing Co. 1952. 40p.